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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,664	03/25/2004	Percy Bennwik	PC30578	6211

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AGOURON PHARMACEUTICALS, INC.
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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,664

Applicant(s)

BENNEWIK ET AL.

Examiner

Michael G. Bogart

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39,44-51 and 53 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-39,44-51 and 53 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/616,638.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Specification

The status of any U.S. patent applications that the instant invent claims priority to should be updated.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6-10, 12, 14, 27, 28, 30, 33, 34, 44, 46-48 and 53 are rejected under 35 U.S.C. § 102(b) as being anticipated by Muskin (US 2,649,995).

Regarding claims 44 and 53, Muskin teaches a method for manufacture of a container (10) containing liquid, the container (10) comprising

a) a front wall having or surrounding a cavity corresponding to the form of an open vessel (12),

b) an opening (17) in the front wall adapted for ejection of the liquid or semi-liquid from the container, said opening defining a container axis,

c) optionally a sealing (19) over the opening (17) adapted for temporary use, and

d) a flat or single curved rear wall (21, 23) closing and sealing the open part of the front wall vessel (12) to confine a space for the liquid in the container (10), the rear wall (21, 23)

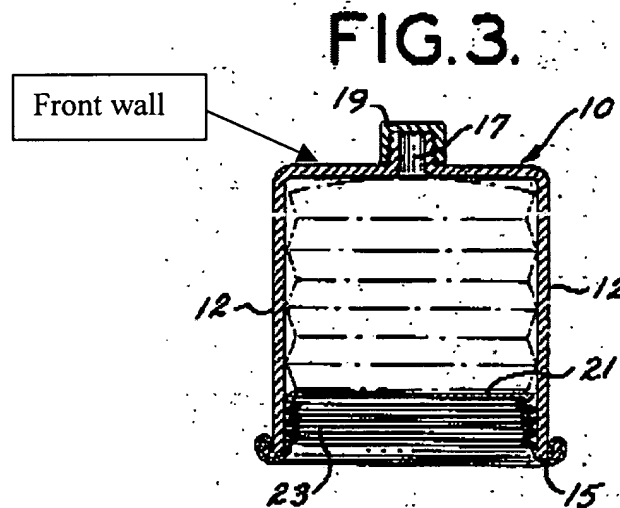
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running at least partially perpendicular to the container axis and being displaceable or deformable for movement towards the opening to pressurize the container liquid, the method comprising:

forming a front wall with a cavity in the form of a vessel (12) with an opening (17) connecting the vessel with the front wall front surface;

introducing liquid into the vessel cavity, and

attaching and adhering a flat or single-curve rear wall (21, 23) film to the vessel cavity open part to enclose the liquid in the container (10)(column 1, lines 22-42; column 3, lines 46-59)(see figure 3, infra).



Regarding claim 1, Muskin teaches a rigid front wall and a rear wall (21, 23) deformable to substantially fill out the container cavity (column 2, lines 23-46)(see figure 3).

Regarding claim 4, Muskin teaches a front wall that has a roughly constant thickness (figure 11).

Regarding claims 6 and 7, Muskin teaches that the front or rear surface of the front wall is substantially flat or single-curved (figure 3).

Regarding claim 8, Muskin teaches that the front and rear surfaces of the front wall are substantially parallel or concentric (figure 3).

Regarding claim 9, Muskin teaches a front wall has an overall shape of a plate or a cylinder part (figure 3).

Regarding claim 10, Muskin teaches an opening (17) that has a cross-section that is roughly constant (figure 3).

Regarding claims 12, Muskin teaches an opening (17) that may assist in forming a coherent liquid or semi-liquid stream.

Regarding claim 27, Muskin teaches a rear wall (21, 23) that is folded (23).

Regarding claim 28, Muskin teaches a rear wall (21) has the same overall shape (flat) as the front wall.

Regarding claim 30, Muskin teaches that said rear wall is inelastic (column 3, lines 11-38).

Regarding claims 33 and 34, Muskin teaches a removable sealing (19).

Regarding claims 46-48, Muskin teaches that the step of adhering can include soldering (col. 3, lines 46-59)

Claims 2, 3, 5, 14, 19, 44 and 45 are rejected under 35 U.S.C. § 102(b) as being anticipated by McGill (WO 94/13154 A2).

Regarding claims 44, McGill teaches a method for manufacture of a container containing liquid or semi-liquid, the container comprising

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a) a front wall (10, 25) having or surrounding a cavity corresponding to the form of an open vessel (12),

b) an opening (22) in the front wall adapted for ejection of the liquid or semi-liquid from the container, said opening defining a container axis,

c) optionally a sealing (23) over the opening (22) adapted for temporary use, and

d) a flat or single curved rear wall (17) closing and sealing the open part of the front wall vessel (10, 25) to confine a space for the liquid in the container, the rear wall (17) running at least partially perpendicular to the container axis and being displaceable or deformable for movement towards the opening to pressurize the container liquid, the method comprising:

forming a front wall (10, 25) with a cavity in the form of a vessel with an opening (22) connecting the vessel with the front wall (10) front surface;

introducing liquid into the vessel cavity, and

attaching and adhering a flat or single-curve rear wall (17) film to the vessel cavity open part to enclose the liquid in the container (page 2, 4th paragraph-page 4, first paragraph)(see figure 3, infra).

Regarding claims 2 and 3, McGill teaches that the cavity is generally concave and lacks undercut parts (see figure 3).

Regarding claim 5, McGill teaches a front wall (10, 25) that increases in thickness that increases in a direction away from the axis (figure 3).

Regarding claims 14 and 19, McGill teaches multiple container units in a rigid structure (see figure 5, infra).

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Regarding claim 45, McGill teaches injection molding of front wall (10) (col.5, lines 19-28).

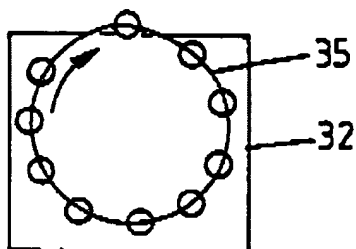


FIG. 5.

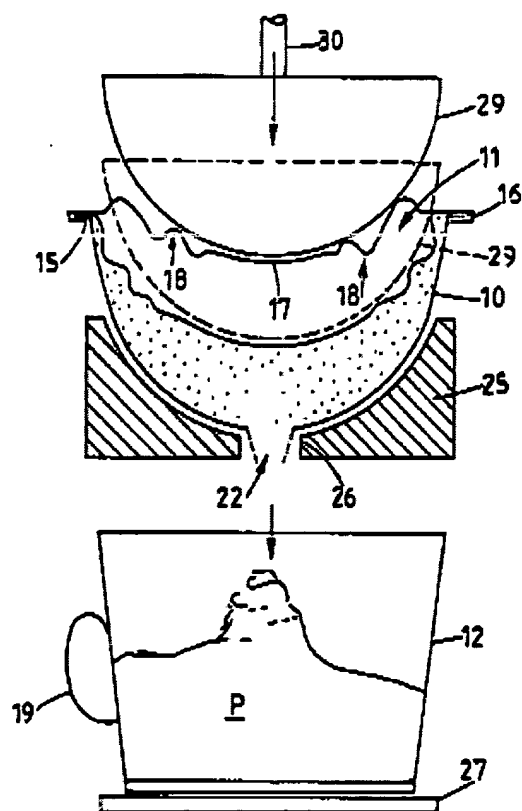


FIG. 3.

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Claims 11, 14-17, 19-21, 29, 33-35, 44 and 49 are rejected under 35 U.S.C. § 102(b) as being anticipated by Lloyd *et al.* (US 5,709,202 A; hereinafter “Lloyd”).

Regarding claim 44, Lloyd teaches a method for manufacture of a container (2) containing liquid, the container (2) comprising

a) a front wall (9) having or surrounding a cavity corresponding to the form of an open vessel,

b) an opening (10) in the front wall (9) adapted for ejection of the liquid from the container (2), said opening (10) defining a container axis,

c) optionally a sealing (12) over the opening (10) adapted for temporary use, and

d) a flat or single curved rear wall (3) closing and sealing the open part of the front wall (9) vessel to confine a space for the liquid in the container (2), the rear wall (3) running at least partially perpendicular to the container axis and being displaceable or deformable for movement towards the opening (10) to pressurize the container liquid (2), the method comprising

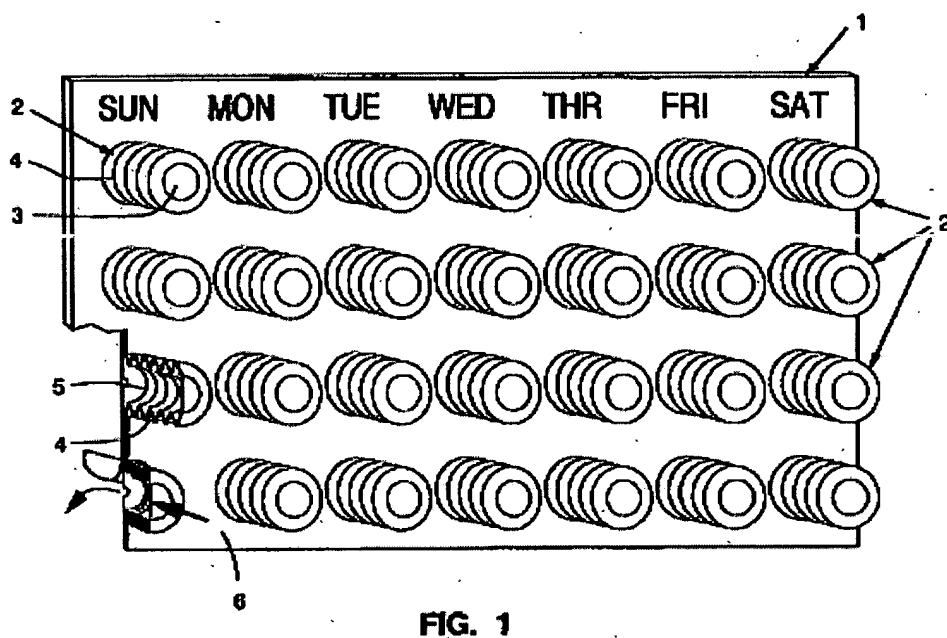
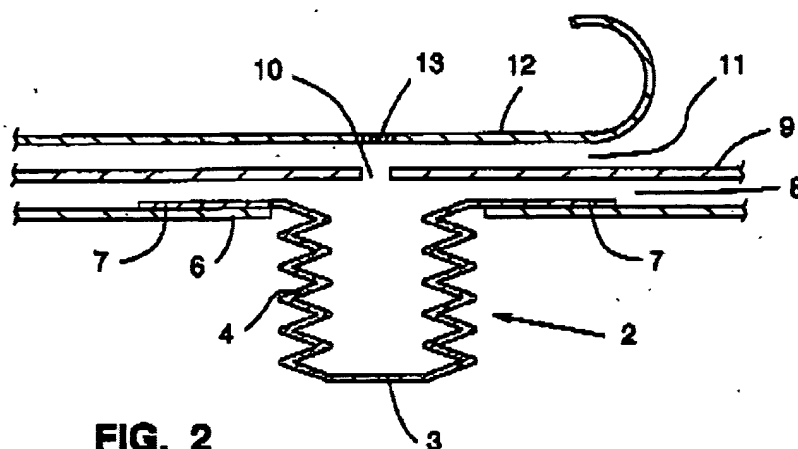
forming a front wall (9) with a cavity in the form of a vessel with an opening (10) connecting the vessel with the front wall (10) front surface,

introducing liquid into the vessel cavity, and

attaching and adhering a flat or single-curve rear wall (3) film to the vessel cavity open part to enclose the liquid in the container (2)(see figure 2, *infra*).

Regarding claim 11, Lloyd teaches an aerosol dispenser (abstract).

Regarding claims 14-17, 19-21 and 49, Lloyd teaches multiple containers sharing a common, relatively rigid, flat front wall structure with parallel front and back surfaces (see figure 1, *infra*).



Regarding claim 29, Lloyd teaches the rear wall (3) is at least partially elastic due to the accordion structure.

Regarding claims 33-35, Lloyd teaches a removable sealing (12) that is flat or single curved.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

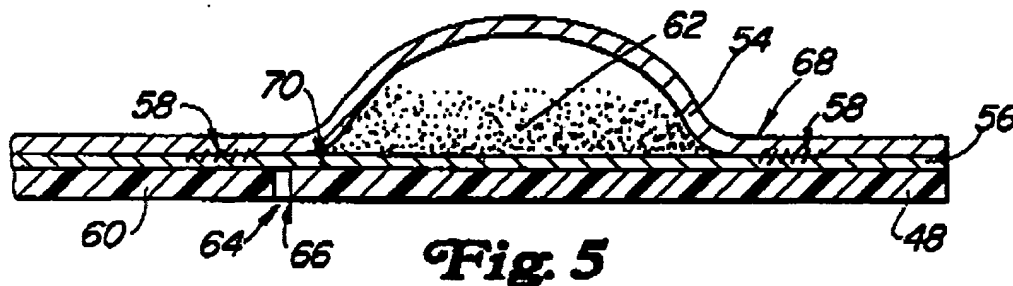
Claims 36-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lloyd.

Regarding claims 36-39, Lloyd expressly teaches the claimed invention except for the specific distance between the front and rear walls. Merely changing the size of a prior art device is not sufficient to patentably distinguish the claimed invention over the prior art. *Gardener v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984). MPEP § 2144.04 IV.

Claims 18, 22-24, 50 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lloyd in view of Eisele *et al.* (US 5,622,166 A).

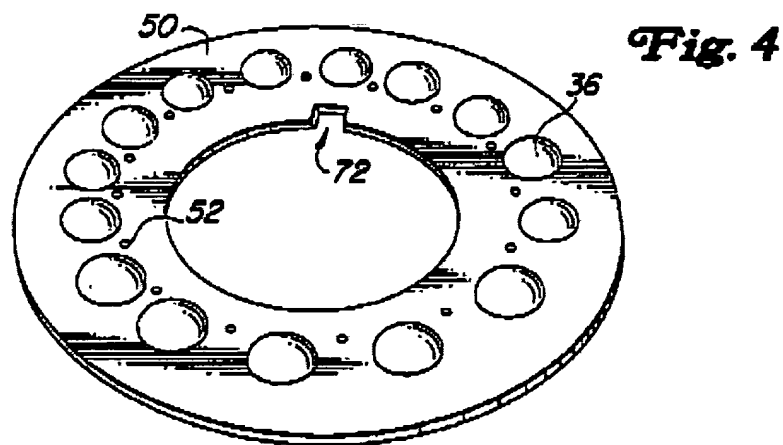
Regarding claims 18, 50 and 51, Lloyd fails to teach rear wall surfaces of multiple containers covered by a single sheet.

Eisele *et al.* teach such a container having a single sheet (60) which covers the rear walls (see figure 5, below). This sheet is part of a cartridge mechanism for holding and dispensing multiple containers.



At the time of the invention, it would have been obvious to adapt the container of Lloyd such that the container is used in a cartridge device as taught by Eisele *et al.* in order to provide facilitated dispensing of the contents of the containers.

Regarding claims 22-24, Eisele *et al.* teach an overall disk structure with containers concentrically located thereon (see figure 4, below).

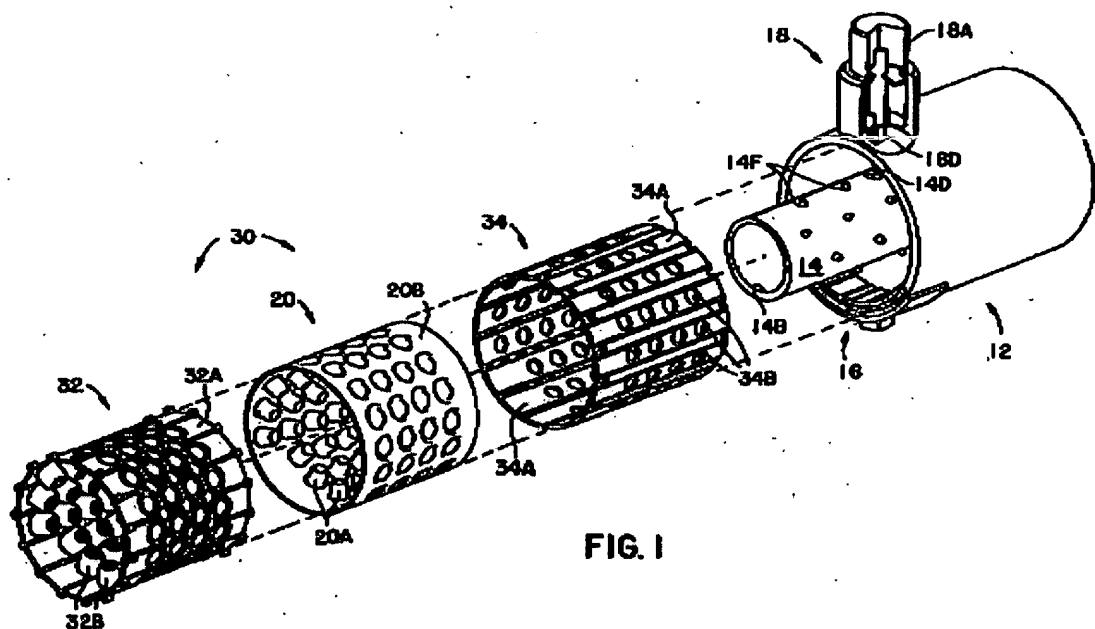


Claims 25 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lloyd and Eisele *et al.* in view of Casper *et al.* (US 5,415,162 A).

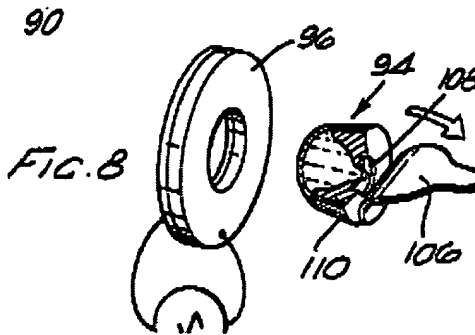
Lloyd and Eisele *et al.* do not teach multiple containers arranged to have an overall cylindrical shape.

Casper *et al.* teaches multiple powder containers having an overall cylindrical shape (see figure 1, below).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to manufacture the containers of Casper *et al.* according to the method taught by Lloyd and Eisele *et al.* in order to provide a container that stays sealed until the bottom wall has pressure applied to it.



Embleton teaches a front wall (110) formed with a cut-out area (108) around the opening (figure 8. infra). This aids in the control of the behavior of liquids exiting the nozzle.



A the time of the invention, it would have been obvious to one of ordinary skill in the art to use the nozzle structure of Embleton in the device of Lloyd in order to control the spray pattern of the device.

Regarding claims 31 and 32, Embleton teaches a rear wall (206) that is a foil laminate (page 15, lines 10-21).

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
23 June 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

